

# The Gazette of India

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No. 42] NEW DELHI, WEDNESDAY, FEBRUARY 18, 1953

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### ELECTION COMMISSION, INDIA NOTIFICATION

*New Delhi, the 18th February, 1953*

**S.R.O. 358.**—WHEREAS the election of Shri Pratap Singh, as a member of the Legislative Assembly of the State of Madhya Bharat from the Barwani Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Chain Singh son of Shri Sukhlalji Adivasi, Kachhi Mohalla, Barwani, District Nimar;

AND WHEREAS the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL AT INDORE (MADHYA BHARAT)

Shri Amar Nath Segal, B.Sc. (Hons.), LL.B., *Chairman.*

Shri R. N. Shingal, B.A., LL.B., *Member.*

Shri M. B. Rege, B.A., LL.B., *Member.*

#### ELECTION PETITION NO. 93 OF 1952

Chain Singh, s/o Sukhlalji Adivasi, Kachhi Mohalla, Barwani, District Nimar, *Petitioner.*

#### *Versus*

Pratapsingh, s/o Bhimsingh Adivasi, Village Picchori, Tehsil Barwani, District Nimar, *Respondent.*

M/s. S. M. Samvatsar and B. W. Tilloo Counsel for the Petitioner.

M/s. S. D. Sanghi, K. N. Joshi, G. P. Dube and K. L. Goyal Counsel for the Respondent.

#### JUDGMENT

Pratapsingh s/o Bhimsingh Adivasi was elected to the Madhya Bharat Legislative Assembly from the Barwani Reserved (Adivasi) Constituency at the election held in January 1952. His election is challenged in this petition by Chainsingh s/o Sukhlalji the unsuccessful candidate on the ground that Pratapsingh was at the date of nomination a Patel of Villages Picchori and Sirsani.

It appears that Pratapsingh was performing the duties of Patel in Picchori which is a Khalsa village. He tendered his resignation of that office to the

Tehsildar Barwani on 19th November 1951, and later submitted a telegram direct to the Collector on 22nd November, 1951, as follows:—

"Convey to sanction resignation of Pateli Pichhori from 19th November to Deputy Collector Resignation submitted to Tehsildar Barwani. Pratapsingh Patel Pichori."

On this telegram the Collector Shri G. S. Chandorkar passed an order on the same day.

"Resignation sanctioned Inform the S.D.O. Tehsildar and the applicant."

On the resignation tendered by Pratapsingh on 19th November, 1951, the Tehsildar Shri Trivedi submitted a report to the Deputy Collector on 21st November, 1951, and the latter in turn recommended, by his endorsement forwarding the same to the Collector, that "the resignation be accepted with effect from 19th November, 1951, as the applicant has filed his nomination".

The date for presentation of the nomination papers and the scrutiny regarding their validity were 20th November, 1951, and 23rd November, 1951, respectively.

The above facts are undisputed but on behalf of Pratapsingh it is contended that there is no proof of his having been lawfully appointed to the office of Patel of Pichori; and that the acceptance of the resignation by the Collector must be interpreted to take effect from the 19th of November, 1951.

Sirsani was a Jagir village but part of it was resumed by the Government. There was, according to the respondent, no patel as such, when the whole of the village was a jagir and even for the part which became Khalsa after resumption, it is said that Pratapsingh was not appointed a patel in accordance with law and that the amount of twelve annas which he admittedly received on the basis of the remuneration allowed to patels was paid without authority.

Shri Babulal, Naib Tehsildar Barwani, produced before us the patel registers of Tehsil Barwani, wherein Pratapsingh has been shown as the patel of Pichori and Sirsani, and deposed that he, Pratapsingh has been getting his pateli remuneration on the collections of Pichori and the Khalsa part of Sirsani since the year 1942. Entries in the Mehantana Batni Patrak Ex. P/2 showing payments made in respect of pateli remuneration are admittedly signed by Pratapsingh who in his statement before us was constrained to admit "my grandfather was my predecessor as Patel. The Government appointed a Gumasta for me during my minority. On attaining majority, the Gumasta was discharged. The Pateli Mehantana was Rs. 3/2 per cent in Barwani State. The realizations of land revenue for which I got remuneration was made in March 1951 in respect of 1950. The realizations for the year 1952-53 are not yet made. Those for 1951-52 were made by my nephew. The payment of twelve annas for Sirsani was accepted as Pateli Mehantana".

It is contended that there is no proof of a valid appointment of Pratapsingh to the office of Patel either at Pichori or Sirsani. It is true that no order could be produced in evidence by the petitioner, on whom lay the onus of proving that Pratapsingh is the Patel of these villages; but Shri Babulal Naib Tehsildar Barwani produced the pateli registers, entries P/1 and P/2, wherein, pertain to the Pateli of Pichori and Sirsani respectively. These entries refer to Revenue Branch Order No. 2850 of 29th July, 1942, as the authority for the appointment of Pratapsingh as the Patel in both the villages. They are relevant in any case under section 35 of the Evidence Act and raise *prima facie* a presumption of correctness. Pratapsingh admittedly performed the duties of a Patel at Pichori since 1942 and was conscious of the fact; and his resignation of the post is indicative of a realization that his office was a disqualification for his being elected.

In his statement before us, Pratapsingh said "I acted as patel under verbal orders of the Kamavisdar who had said that written orders will be passed later to appoint me as Patel of Pichori".

It is difficult to imagine that Pratapsingh could have continued all along for ten years or more merely on verbal orders and the presumption from the entries in the registers is, therefore, strengthened.

The appointment and the relevant orders, therefor ought to be especially within the knowledge of the respondent Pratapsingh. His own statement that during his minority there was a Gumasta who was discharged when he (Pratapsingh) attained majority is in the circumstances proof of the existence of Orders recognising Pratapsingh as the successor to his grandfather who was admittedly the Patel of the village.

We hold that Pratapsingh was the Patel of Pichori till the date on which his resignation became operative and is the Patel of Sirsani till now.

The next question is "What is the date from which the resignation took effect".

The undisputed facts bearing on the question are that Pratapsingh tendered his resignation to the Deputy Collector on 19th November 1951, and it reached the Collector, who was the authority to accept it, on the 22 idem. On the latter date Pratapsingh sent a telegram to the Collector requesting that the resignation be accepted as from the 19th November, 1951. Pratapsingh in his statement before us said he had sent a telegram to the Collector on the 19th November 1951. He did not support the statement by calling for the telegram or even producing a receipt and that part of his statement cannot in the circumstances, be accepted.

It was urged on behalf of the petitioner that normally every order must be taken to be prospective and the order of the Collector "Resignation sanctioned. Inform the S.D.O. and the applicant" ought to be construed to be prospective and not retrospective particularly because at the time of passing the order there was no material before the Collector, save the request of Pratapsingh, to judge of the need or propriety of giving retrospective effect to the resignation, and no rule has been referred to, which would justify the arbitrary exercise of such a power, assuming that it could, on administrative grounds or as a penal measure, be ever exercised.

On the other hand the respondent's contention is that the order read with the petitioner's telegram leaves no doubt that acceptance of the resignation with effect from 19th November 1951 was intended. It is, however, unnecessary for us to consider this question at length for even if it were held that the order of the Collector read with the contents of Pratapsingh's telegraphic resignation took effect from the 19th of November and that Pratapsingh was not the Patel of Pichori on the date of presentation of nomination paper, there can be no denial of the fact that he was the Patel of Sirsani and that for the collection of revenue in respect of the Khalsa part of the village he was holding an office of profit, however trivial, under the Government.

It was then contended that the date material for consideration was that of the scrutiny, the 23rd of November 1951 and not the 20th which was merely for presentation of the nomination paper. This contention was based on an ingenious distinction sought to be made between a 'qualification' and a 'disqualification'; and it was urged that what matters at the nomination is the qualification; and the disqualification, if any, comes in for consideration at the scrutiny. This distinction is for the purposes of Section 32 of the Representation of People Act without a difference. Section 32 of the Act provides "Any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act".

There can be no doubt on a true construction of the language of that section that the existence of the qualification and absence of disqualifications are essential for a proper nomination as otherwise the candidate would not be qualified to fill the seat. The scrutiny under section 36 of the Act is for the purpose of determining validity of the nomination. A disqualification on the day of the presentation of the nomination paper would, therefore, make the nomination invalid.

We, therefore, hold that Pratapsingh was disqualified to be chosen to fill a seat in the Assembly and declare his election void. The petitioner will have his costs, Pleaders' fee Rs. 150/-/-.

Before concluding we would respectfully solicit attention to the desirability of providing for the decision of questions pertaining to the improper admission or rejection of nomination papers before the commencement of polling. Such a provision would eliminate the expenses and worries of the candidates and also the expenses to the Government and candidates which are incidental to bye-election.

(Sd.) AMAR NATH SEGAL, Chairman.

(Sd.) R. N. SHINGAL, Member.

(Sd.) M. B. REGE, Member.

Dated the 23rd January, 1953.

[No. 19/93/52-Elec.-III.]

P. S. SUBRAMANIAN,  
Officer on Special Duty.

